

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION - CINCINNATI**

TRACY PHILLIPS,	:	Case No. 1:23-cv-781
	:	
Plaintiff,	:	Judge Matthew W. McFarland
	:	
v.	:	
	:	
TARGET DEPARTMENT STORE,	:	
	:	
Defendant.	:	

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**ORDER ADOPTING REPORT AND RECOMMENDATION (Doc. 25)**

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This wrongful death action is before the Court upon the Report and Recommendation (“Report”) (Doc. 25) of United States Magistrate Judge Karen L. Litkovitz, to whom this case is referred pursuant to 28 U.S.C. § 636(b). Objections to the Report were due September 20, 2024. Only Defendant filed Objections (Doc. 26.) Thus, the matter is ripe for the Court’s review.

The Magistrate Judge recommends that the Court grant Defendant’s Motion to Dismiss (Doc. 3) and that the Complaint be dismissed without prejudice. (Report, Doc. 25, Pg. ID 152.) Pursuant to an Order signed by the Magistrate Judge on July 31, 2024, Defendant’s Motion to Dismiss (Doc. 3) was converted to a Motion for Summary Judgment. (*See* Order, Doc. 17.) However, the Report refers to Defendant’s Motion to Dismiss, rather than the Motion for Summary Judgment, in its recommendation. (Report, Doc. 25, Pg. ID 152.) Defendant filed an objection to the Report only as it relates to the “likely inadvertent” references of Defendant’s original Motion to Dismiss. (Objection, Doc. 26.) Plaintiff filed no objections to the Report. Since the Magistrate Judge’s Order

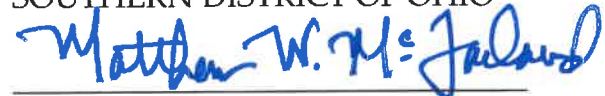
makes clear that Defendant's Motion was converted to a Motion for Summary Judgment, and the Report's legal analysis examines the Motion under the standards for summary judgment, the Court believes the Report's references of Defendant's Motion to Dismiss is scrivener's error. *Moore v. Liewert*, No. 22-2056, 2023 WL 8378827, at \*3 (6th Cir. August 16, 2023). Defendant's objection is well taken, and the Court agrees that Defendant's Motion to Dismiss (Doc. 3) was converted to a Motion for Summary Judgment.

As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has made a de novo review of the record in this case. Upon said review, the Court finds that Defendant's objection is well-taken and is accordingly **SUSTAINED**. Defendant's Motion for Summary Judgment (Doc. 3) is **GRANTED** and this case shall be **TERMINATED** from the Court's docket.

**IT IS SO ORDERED.**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO

By:



MATTHEW W. McFARLAND  
UNITED STATES DISTRICT JUDGE